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Attorneys for Plaintiff Anthony Randall

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ANTHONY RANDALL,  
Plaintiff,

vs.

UNITED NETWORK FOR ORGAN  
SHARING; CEDARS-SINAI  
MEDICAL CENTER,  
Defendants.

Case No. 2:23-cv-02576-MEMF (MAAx)  
The Hon. Maame Ewusi-Mensah  
Frimpong, Ctrm.: 8B

**DECLARATION OF MATTHEW L.  
VENEZIA IN SUPPORT OF  
PLAINTIFF ANTHONY RANDALL'S  
EX PARTE APPLICATION TO  
RECONSIDER ORDER ENTERED  
ON AUGUST 14, 2023 [DKT. 37]**

*Filed Concurrently with Ex Parte  
Application; Declaration of Cleveland  
Holt; Declaration of Randolph Hallman;  
and [Proposed] Order]*

Trial Date: None Set

**DECLARATION OF MATTHEW L. VENEZIA**

I, Matthew L. Venezia, declare and state as follows:

1. I am an attorney at law, duly admitted to practice before this Court and all courts of the State of California. I am a partner with Ellis George LLP, counsel of record for Plaintiff Anthony Randall in this putative class action, and also counsel for certain putative class members. I have firsthand, personal knowledge of the facts set forth below and if called as a witness could and would competently testify thereto.

2. On November 7, 2023, my office was contacted by a member of the kidney waitlist. UNOS is aware of the identity of this individual, but I do not include his name in the public record, and redacted his name from the relevant emails because the Application discusses his personal medical information.

3. This putative class member advised me that their transplant hospital informed them they were entitled to a 3.5 year wait-time adjustment, and further advised that the transplant hospital had submitted a request to UNOS to process this adjustment. However, the transplant hospital further advised the putative class member that it was not aware whether UNOS had in fact processed the adjustment.

4. The transplant hospital also told this putative class member that there was a specific kidney they were a candidate and being considered for. This triggered in my mind an urgent need to ensure the wait-time adjustment had been processed, and I offered to, and was provided authority to, contact UNOS through their counsel in this matter to seek confirmation.

5. A true and correct copy of my November 7, 2023 email to UNOS's counsel concerning this matter is attached hereto as "**Exhibit A.**"

6. Thereafter I discussed this matter on the phone with Mr. Blouin. Mr. Blouin instructed me to contact UNOS through a privacy e-mail portal, but also represented that he believed UNOS had a process to make wait-time adjustments, and that this putative class member would not be able to "jump the line."

1           7.       A true and correct copy of my November 7, 2023 email to UNOS's  
2 privacy portal, and UNOS's response thereto, is attached hereto as "**Exhibit B.**"

3           8.       Putative class members now regularly contact myself, and my  
4 colleague, George Laiolo, unprompted, seeking information about this case and  
5 legal advice concerning their transplant candidacies. I understand from these  
6 conversations that these calls are generally prompted by the receipt of a notice from  
7 a transplant hospital advising that the putative class member is entitled to a wait-  
8 time adjustment. Upon such notice, the putative class members will locate this  
9 action using an internet search engine, and contact my office.

10          9.       Mr. Holt and Mr. Hallmon were gracious enough to submit declarations  
11 in support of the Application sharing information about their personal medical  
12 situations. My office has heard similar stories from other putative class members,  
13 emphasizing the human element of this case where tens-of-thousands of Black  
14 applicants are anxiously awaiting life-saving kidney transplants and seeking to  
15 understand their rights in relation to the wait-time adjustment process.

16          10.      The lack of discovery in this case and UNOS's lack of transparency  
17 makes it difficult for me to provide fully-informed legal advice to putative class  
18 members. The putative class members have questions about whether their wait-time  
19 adjustments have been processed, and UNOS was not forthcoming with that  
20 information the last time I contacted them on behalf of a putative class member.  
21 Further, I do not have evidence concerning whether UNOS has completed the wait-  
22 time adjustment process as promised, that could support a motion for a temporary  
23 restraining order or preliminary injunction, if UNOS has in fact failed to complete  
24 its adjustment of wait-times. This lack of information prejudices the ability to  
25 provide the best legal advice.

26          11.      My office obtained a true and correct copy of a page on UNOS's  
27 website, titled "Implementation notice: Waiting time modifications for candidates  
28 affected by race-inclusive eGFR calculations[.]" available at

1 <https://unos.org/news/implementation-kidney-waiting-time-mods-equity/>. This  
2 screenshot is attached hereto as “**Exhibit C.**”

3 12. My office obtained a true and correct copy of a page on UNOS’s  
4 website, titled “Black kidney candidates are receiving waiting time modifications,  
5 helping them get the organs they need[,]” available at [https://unos.org/news/in-](https://unos.org/news/in-focus/black-kidney-candidates-receiving-waiting-time-modifications-helping-get-needed-organs/)  
6 [focus/black-kidney-candidates-receiving-waiting-time-modifications-helping-get-](https://unos.org/news/in-focus/black-kidney-candidates-receiving-waiting-time-modifications-helping-get-needed-organs/)  
7 [needed-organs/](https://unos.org/news/in-focus/black-kidney-candidates-receiving-waiting-time-modifications-helping-get-needed-organs/). This screenshot is attached hereto as “**Exhibit D.**”

8 13. On January 26, 2024, I gave email notice of the Application to  
9 Defendants UNOS and Cedars-Sinai. A true and correct copy of this email is  
10 attached hereto as “**Exhibit E.**”

11 14. On January 30, 2024, I met-and-conferred telephonically with counsel  
12 for Defendants UNOS and Cedars-Sinai concerning the Application. I have been  
13 advised that Defendants UNOS and Cedars-Sinai intend to oppose the Application.

14 Executed this 1st day of February 2024, at Chicago, Illinois.

15 I declare under penalty of perjury under the laws of the United States of  
16 America that the foregoing is true and correct.

17  
18 /s/ Matthew L. Venezia  
19 Matthew L. Venezia  
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# EXHIBIT 'C'

**From:** Matthew L. Venezia  
**Sent:** Tuesday, November 7, 2023 3:05 PM  
**To:** dblouin@winston.com  
**Cc:** George Laiolo  
**Subject:** Urgent UNOS Matter [REDACTED]

Hello Dan –

I left you a voicemail, but to follow up, my office was contacted by [REDACTED] who I understand is currently on the kidney waitlist, listed through Tampa General in Florida. My understanding is that [REDACTED] has applied for a wait time adjustment – somewhere in the neighborhood of 3.5 years – and also is currently being considered for a particular donor kidney through UNOS's waitlist. We want to make sure that [REDACTED] wait time adjustment has in fact been processed prior to UNet awarding the kidney in question to ensure that [REDACTED] receives fair consideration. This matter is urgent and I would respectfully request your and UNOS's prompt attention, and I am available on my cell to discuss at 314-392-3510.

**Matthew L. Venezia** | Partner  
**ELLIS GEORGE CIPOLLONE**  
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mvenezia@egcfirm.com  
www.egcfirm.com

# EXHIBIT B

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**From:** Matthew L. Venezia  
**Sent:** Tuesday, November 7, 2023 4:15 PM  
**To:** privacy@unos.org  
**Cc:** Blouin, Dan; George Laiolo  
**Subject:** Urgent Wait Time Adjustment Request [REDACTED]  
**Attachments:** Urgent UNOS Matter [REDACTED]

Dear UNOS Privacy,

I have been authorized by [REDACTED] to request that you ensure his kidney wait time has been properly adjusted. [REDACTED] informed me that Tampa General Hospital in Florida recently informed him that Tampa General put in an application to UNOS to adjust [REDACTED] wait time by roughly 3.5 years. [REDACTED] has also been informed that he is being considered for a kidney which may become available in the near term. Accordingly, [REDACTED], and I on his behalf, want to confirm that his wait time has, in fact, been adjusted by UNOS/UNet.

I first made this request to Mr. Dan Blouin, lead defense counsel for UNOS in the class action filed by Mr. Anthony Randall in the Central District of California (see attached correspondence). Mr. Blouin informed me via telephone that I should reach out to this e-mail account, since he supposedly lacks any involvement with the operations of UNOS. He also stated that he suspects [REDACTED] wait time adjustment is subject to a "process" that UNOS would be unwilling to expedite for [REDACTED].

Frankly, any such refusal would be outrageous. It appears that [REDACTED] has been racially discriminated against by UNOS for years, and [REDACTED] simply wishes to confirm that he will receive fair treatment by UNOS for a kidney which is becoming available shortly. This could very well be a life or death situation for [REDACTED], and [REDACTED]'s life is in UNOS's hands. [REDACTED] is not attempting to jump any lines. Rather, he simply wishes to make sure that the 3.5-year wait-time adjustment referred to by Tampa General is processed immediately. Please confirm whether that is the case. Thank you,

**Matthew L. Venezia** | Partner  
**ELLIS GEORGE CIPOLLONE**  
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# EXHIBIT C



# Implementation notice: Waiting time modifications for candidates affected by race-inclusive eGFR calculations

Jan 5, 2023 | Kidney/pancreas, News, Policy changes



*\*Last updated Jan. 27, 2023*

**Audience:** *(Please share this notice with anyone in your organization who would benefit from it.)*

- Kidney Primary Program Administrators, Primary Data Coordinators, Primary

## Physicians and Primary Surgeons

- Kidney TX Directors, Administrators and Managers, Surgeons and Physicans
- Kidney Quality Directors and Managers, Quality Coordinators and Compliance Officers
- Kidney Data Coordinators, Clinical Coordinators and Clinical Support Staff
- OPTN Representatives and Alternate Representatives
- The OPTN Board of Directors
- The OPTN Kidney Transplantation Committee
- The OPTN Minority Affairs Committee

## Implementation date

- Jan. 5, 2023

## At-a-glance

A policy action is now in effect that requires transplant programs to assess their waiting lists and submit waiting time modifications for Black candidates affected by race-inclusive eGFR calculations. Programs must complete the process and provide the necessary documentation to the OPTN by Jan. 3, 2024. Read [the policy notice](#) for *OPTN Policy 3.7.D Waiting Time Modifications for Kidney Candidates Affected by Race-Inclusive eGFR Calculations*.

- **Professional education is available in [UNOS Connect](#)**
- **An [FAQ for transplant professionals](#) is on the OPTN website**

## Additional information

Programs must notify all of their currently listed candidates before and after assessment of their waiting lists, as well as submit documentation to the OPTN attesting to the completion of their candidate review, notification of candidates, and submission of modification applications. The Board of Directors of the Organ Procurement and Transplantation Network [unanimously approved this policy action](#) on Dec. 5, 2022.

## What you need to know

All kidney transplant programs have until Jan. 3, 2024 to:

- Assess their respective kidney waiting lists to identify all affected Black kidney candidates
  - Affected candidates who may be eligible include:
    - Those who are registered to the OPTN waiting list and are currently accruing waiting time with criteria in *OPTN Policy 8.4.A: Waiting Time for Candidates Registered at Age 18 or Older*
    - Those who are registered to the OPTN waiting list, but have not yet qualified for waiting time accrual
  - To help programs identify those candidates registered as Black or African American, a custom reporting tool is accessible in the Data Services Portal. Find more details below.
- Determine whether a race-neutral eGFR calculation shows they should have qualified sooner to start gaining waiting time for a transplant
- Submit completed waiting time modification requests to the OPTN for those candidates
- Send two separate notifications to all kidney candidates on their respective waiting lists
  - The first notification will be sent before the program's assessment of their list, to inform all kidney candidates of the requirements of the program according to the policy
  - The second notification will be sent after the program's assessment of their list, to inform each kidney candidate of their eligibility status
- Provide an attestation to the OPTN that these requirements have been met

Professional education includes sample candidate notification and attestation language. Find more information below.

### **Criteria needed for waiting time adjustments**

To apply for a waiting time adjustment for a candidate registered as Black or African American in the OPTN Computer System, the program must provide documentation demonstrating that with a race-inclusive calculation, the candidate's eGFR was over 20 mL/min, but with a race-neutral calculation it would have been 20 mL/min or less.

*This could include a date prior to the time the candidate was first registered on the OPTN waiting list.*

## **Waiting time modification forms**

An eGFR Waiting Time Modification Form is available in UNet<sup>SM</sup> on the Forms/Tools page, and can be accessed through the Resources tab on the Secure Enterprise (UNet) homepage.

Programs are required to complete an eGFR Waiting Time Modification form for each affected candidate, including both pediatric and adult candidates.

## **Programs can identify candidates with a center-specific custom reporting tool**

Access the custom reporting tool through the Secure Enterprise homepage:

- *Data Services>OPTN Data Files>Current Waitlisted African American Candidates*
- The report is also visible in the Announcements and Notifications section of Data Services

This report is updated weekly.

## **Education now available**

Resources are now available to help kidney programs comply with this policy action.

- Read [frequently asked questions](#) (for transplant professionals) on the OPTN website
- Review policy change impacts, understand policy process needs, and get sample notification and attestation language in an educational offering in [UNOS Connect](#)
  - **KID118:** Waiting Time Modifications for Kidney Candidates Affected by Race-Inclusive eGFR Calculations
- Access a custom reporting tool in the UNet<sup>SM</sup> Data Services Portal
  - The OPTN Data File “Current Waitlisted African American Candidates” provides a list of current kidney candidates reported with African

American/Black as a Race category with wait time qualifying information

### **Additional resources are in development**

The OPTN is actively preparing a broad range of additional resources to help guide candidates and programs through this process.

Please contact [member.questions@unos.org](mailto:member.questions@unos.org) with any questions about this policy action.

### **Background**

The OPTN Minority Affairs and Kidney Transplantation Committees co-sponsored the proposal approved by the board. In June 2022, the board [prohibited the use of any race-based eGFR calculation](#) for any purpose within OPTN policy. This action did not include waiting time reinstatement for any date prior to the candidate's initial registration on the OPTN waiting list. This subsequent action addresses waiting time reinstatement for those affected candidates.

The removal of race variables from eGFR calculations has been broadly supported by institutions including the National Academies of Sciences, Engineering and Medicine, as well as a joint task force of the American Society of Nephrology (ASN) and the National Kidney Foundation (NKF). Improving equity in access to transplant opportunities for patients is an OPTN strategic goal.

### **ACTION AGENDA**

## **Actions to strengthen the U.S. organ donation and transplant system**

Actions in progress

## FAA: Organs back in the cabin? ›



### Understand. Compare. Improve.

Access research and data analytics to improve performance and increase transplant:

- [For transplant hospitals ›](#)
- [For OPOs ›](#)

### Quick links

- [SUBSCRIBE UNOS Transplant Pro](#)
- [OPTN policy notices | Policies](#)
- [OPTN evaluation plan](#)
- [OPTN data reports](#)
- [Regional meetings](#)
- [TransNet<sup>SM</sup> resources](#)
- [UNet<sup>SM</sup> University](#)
- [UNet<sup>SM</sup> system notices](#)

[Access UNet<sup>SM</sup>](#)

# EXHIBIT'D





# Black kidney candidates are receiving waiting time modifications, helping them get the organs they need

Dec 4, 2023 | Equity, In Focus, Kidney/pancreas, Kidney/pancreas, News, Policy monitoring reports, Trending

## IN FOCUS

**\*Median of 1.7 years of waiting time awarded to Black kidney candidates with a completed waiting time modification**



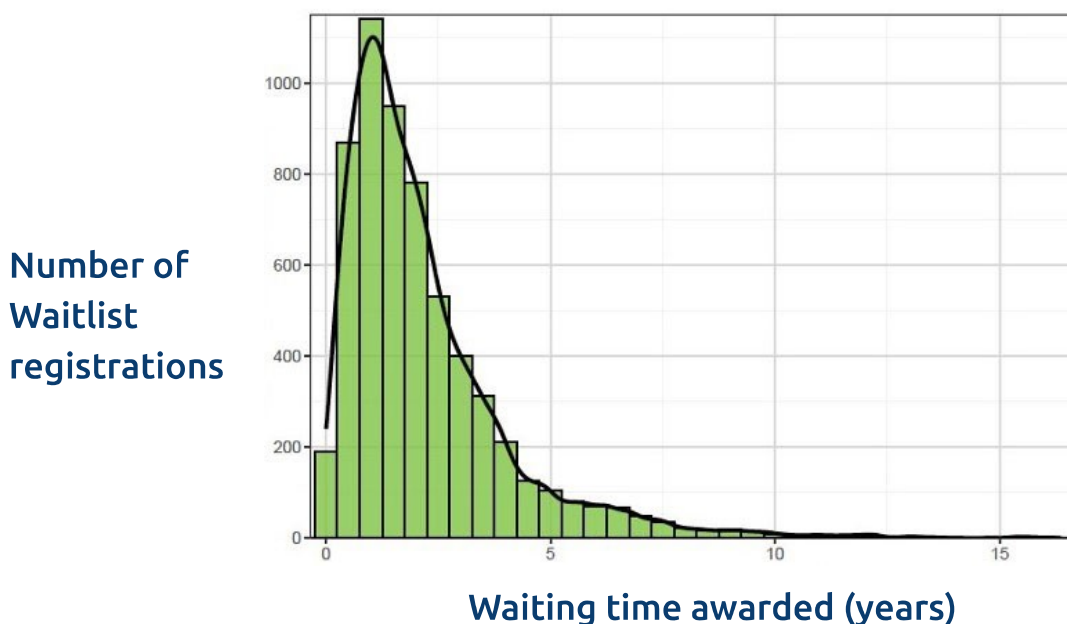
## New monitoring data shows kidney policies aimed at reducing health disparities are working as intended

Six months after new kidney policies took effect, **more than 6,100 Black kidney candidates have had their waiting times modified, helping them get the organs they need.** A new monitoring report shows the median (statistical midpoint) of additional waiting time given to these candidates was 1.7 years. The attached figure below shows the distribution of waiting time awarded to candidates with a waiting time modification.

*Please note, these numbers are as of July 5, 2023. Many more attestations and waiting time modifications have been completed to date and all kidney programs are required to submit an attestation to the OPTN by Jan. 3, 2024, confirming their program has:*

- *Assessed their waiting list, submitted modifications and supporting documentation, and notified candidates*

### Distribution of waiting awarded



Additionally, **506 candidates with a waiting time modification received a kidney transplant** between Jan. 5, 2023 and July 5, 2023. These policies aimed to improve transplant equity by [backdating the waiting time](#) for Black kidney transplant candidates who were disadvantaged by previous use by transplant programs of race-inclusive eGFR calculations. The estimated glomerular filtration rate, or eGFR for short, measures how slowly or quickly kidneys remove a waste product called creatinine from the blood. This calculation helps doctors understand how sick a kidney patient is before listing them for transplant. Also included in the report, is one-year of post implementation data for the [requirement of programs to use race-neutral eGFR calculations](#) that aimed to address inequities for these candidates by more accurately estimating their GFR values.

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## The full report

Read the [key takeaways](#) from the combined report or access the [full report on the OPTN website](#). This report was presented to the OPTN Kidney Transplantation and Minority Affairs Committees on Nov. 20, 2023.

Find additional information, FAQs and education on this policy in the toolkit on the [OPTN website](#).



### How do we track policy success?

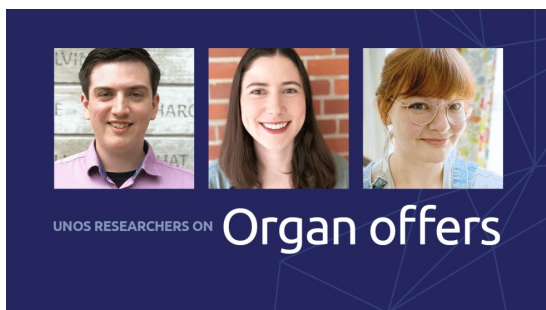
We look at the data.

**29% increase in kidney transplants\***

Policy monitoring reports

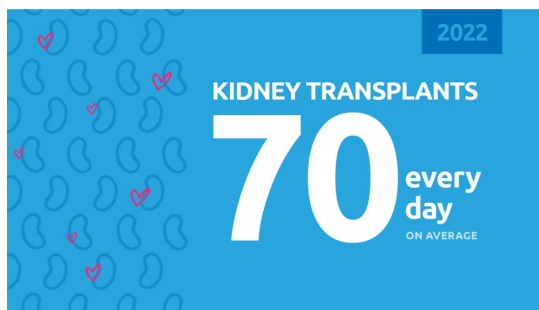
\*Two-year report of kidney data

## In focus



### Research in focus: examining organ offers

Sep 5, 2023



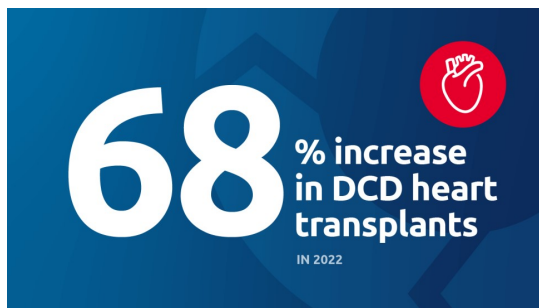
### New milestone reached in kidney donation and transplant

Mar 28, 2023



### New animation for patients explains the lung Composite Allocation Score (CAS)

Feb 21, 2023



### Another record year for heart transplants: Steep increases seen in DCD transplants in 2022

Feb 14, 2023

# EXHIBIT'E

**From:** Matthew L. Venezia  
**Sent:** Friday, January 26, 2024 5:02 PM  
**To:** Blouin, Dan; Weber, Thomas; sobi@winston.com; Kardassakis, Jon; Stierna, Danielle  
**Cc:** George Laiolo  
**Subject:** Randall v. UNOS et al. / Ex Parte Notice

Counsel –

We are writing to provide notice that we intend to move ex parte for an order reconsidering the Court's order of August 14, 2023 [ECF No. 37] and allowing discovery to proceed at this time. This application will be made on the grounds that new facts have emerged not previously considered by the Court. That is, putative class members continue to contact counsel seeking advice concerning the wait time adjustment process, and counsels' ability to advise such persons is prejudiced by the inability to obtain any discovery. These are current Black members of the kidney waitlist who are seeking life-saving organ donations, and urgently need advice concerning their legal rights. Please advise when you are available for a call to meet and confer on either Monday, January 29, 2024, or Tuesday, January 30, 2024, as required by the local rules.

Regards

**Matthew L. Venezia** | Partner

**ELLIS GEORGE LLP**

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